

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**ADMINISTRATIVE CONSENT ORDER**

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**IN THE MATTER OF:**

**CITY OF HAMBURG**  
**Wastewater Facility No. 6-36-21-0-01**

**ADMINISTRATIVE  
CONSENT ORDER**  
**NO. ~~2006~~-WW-02**  
**2007**

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**TO: City of Hamburg**  
**c/o Honorable Mayor and Council**  
**P.O. Box 106**  
**Hamburg, IA 51640**

**I. SUMMARY**

This administrative consent order (order) requires the City of Hamburg (City) to comply with the schedule contained in this administrative consent order and to pay stipulated penalties in the event that the schedule is not met. The agreed upon schedule provides for the rehabilitation of the existing lagoon cells by November 1, 2007 and for the completion of a new fourth lagoon cell by August 31, 2009. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions regarding this order should be directed to:

**Relating to technical requirements:**

Dan Stipe, Supervisor  
IDNR Field Office #4  
1401 Sunnyside Lane  
Atlantic, IA 50022  
Ph: 712/243-1934

**Relating to legal requirements:**

Diana Hansen, Attorney at Law  
Iowa Department of Natural Resources  
Henry A. Wallace Building, 502 East 9<sup>th</sup>  
Des Moines, Iowa 50319-0034  
Ph: 515/281-6267

**II. JURISDICTION**

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure

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compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

The parties agree to the following Statement of Facts:

1. The City owns and operates Wastewater Facility No. 6-36-21-0-01, located in Fremont County, Iowa. The City's waste stabilization lagoon facility consists of a collection system that transports waste from the City to a lift station at the southeast corner of the City near Highway 333. The lift station pumps the waste to the lagoon system located approximately ¼ mile south of the lift station. The lagoon system was originally a two cell facultative lagoon. A third cell was added in 2003.

2. Treated wastewater is permitted to be discharged to a drainage ditch that discharges to the West Nishnabotna River, pursuant to Iowa NPDES Permit No. 6-36-21-0-01. The current permit was issued on September 21, 2001 and contains limitations for the discharge of pollutants, including but not limited to carbonaceous biochemical oxygen demand [CBOD<sub>5</sub>], total suspended solids [TSS], and pH.

The permit includes operation requirements for the City's lagoon system. Pursuant to the permit the City is required to operate the lagoon system as a controlled discharge facility with two discharges per year in the spring and fall. **"Continuous discharge of wastewater from this facility is prohibited.** The treatment plant must be operated using a storage/drawdown mode of operating. Wastewater must be stored for approximately 180 days after which time the water level is to be lowered to make room for the next storage period. Lagoon drawdown should occur in the spring and fall and at times when the flow in the receiving stream is not at its minimum."

The permit contained a two phase compliance schedule for construction of facility improvements. The schedule provided for meeting final effluent limits by January 1, 2005. The City has not met this schedule.

3. On October 23, 2001, the City's engineer notified the Department that the City was considering adding a third lagoon cell in conjunction with the rehabilitation of the existing lagoon cells. A third lagoon cell was added in 2003. Other improvements included the addition of new flow measuring devices for influent and effluent. The original two lagoon cells have not been rehabilitated as required by the permit schedule.

There is also the issue of whether a fourth lagoon cell is necessary if the City wants to operate this facility as a controlled discharge facility. The City was informed by a Department letter dated November 14, 2001 that the proposed third cell would not have

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enough capacity for the system to be operated as a controlled discharge facility. In a letter to the City dated August 28, 2002, the City was informed that the addition of a fourth cell needed to be addressed in its project.

4. During inspections of the City's wastewater treatment facility on March 29, 2004 and on August 6, 2004, the Department inspector observed that the east sides of both original cells appeared to have severe erosion damage on the inside face of the berms. Standing water was observed at the outside base of the east berm during both inspections. The inspector also observed a trickle discharge on March 29, 2004, in violation of the proper operation and maintenance provision of the permit and department rules. The inspector was informed by the City's operator during the March 2004 inspection that the City planned on renovating both original cells when additional funding was obtained. As part of the lagoon renovation, the City needs to remove inadequate riprap and replace it with more appropriate riprap. The City's operator indicated to the inspector in August 2004 that the City had applied for a community development block grant. The City was not selected to receive a grant.

5. The City applied for a community development block grant in 2005 for the rehabilitation phase of its wastewater treatment project but did not receive a grant when grants were awarded in March 2006.

6. A meeting was held with the City on March 14, 2006 concerning the appropriate implementation schedule for completion of the upgrade of the City lagoon facilities. The City requested time to submit information showing financial hardship if required to construct the total project too quickly. No further financial information was submitted to demonstrate that the City would face financial hardship if required to complete the upgrade to the City's lagoon system to bring the system into compliance with Department requirements for such facilities. The Department finds that the City would not experience financial hardship if required to upgrade its existing wastewater treatment facilities in accordance with the schedule contained in this order.

7. The implementation schedule set forth in Section V. of this order is agreed to as the appropriate schedule for the upgrade of the City's wastewater treatment facilities.

**IV. CONCLUSIONS OF LAW**

The parties agree to the following Conclusions of Law:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. Iowa Code section 455B.183 prohibits the operation of a wastewater disposal system without a permit from the Department.

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2. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission to promulgate rules relating to the operation of waste disposal systems, including rules relating to monitoring and reporting requirements. The Commission has done so at 567 IAC chapters 60- 64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. Rule 64.7 specifies the conditions that are to be included in a permit, including applicable effluent limitations in chapters 61 and 62 of the rules. The facts noted above violate the permit and the above-cited rules.

3. This facility's NPDES permit requires these facilities to be adequately operated and maintained. Standard Condition 8 of the permit provides that all facilities and control systems shall be operated as efficiently as possible and maintained in good working order. This standard permit condition is based upon subrule 64.7(5)"f". This subrule states "the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control to achieve compliance with the terms and conditions of the permit." The facts set forth previously establish that the City has not complied with this requirement of the permit and Department rules.

**V. ORDER**

The Department orders and the City consents to the following:

1. The City agrees to comply with the following implementation schedule for rehabilitation of the existing lagoon system and for the addition of a fourth lagoon cell.

**A. PHASE II- Existing Lagoon Rehabilitation**

1. Schedule a project initiation meeting with the Department engineer (Project Manager-PM) by March 1, 2007.

2. Submit complete final plans and specifications meeting Department design standards and a complete application for a construction permit on the Department's forms for necessary facility improvements by April 1, 2007.

3. Start construction by June 1, 2007.

4. Complete construction by November 1, 2007.

**B. PHASE III- Lagoon Expansion- Addition of a Fourth Lagoon Cell**

1. Submit preliminary design flows and loads to the Department by November 1, 2007.

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2. Submit updated facilities plan with Schedules A, F and G to Department PM by February 15, 2008.
3. Submit preliminary plans and specifications by June 15, 2008.
4. Submit complete final plans and specifications meeting Department design standards and a complete application for a construction permit on the Department's forms for necessary facility improvements by July 15, 2008.
5. Start construction by August 31, 2008
6. Complete construction by August 31, 2009.

2. The City agrees to properly operate and adequately maintain its existing wastewater treatment facilities to obtain the best effluent quality possible.

3. The City agrees to the payment of stipulated penalties in the amount of \$100.00 per day that the interim deadlines established for the City in sections V.1.A.(2), V.1.A.(3), and V.1.B.(1)-(5) of this order are not met by the City. The City agrees to the payment of a stipulated penalty in the amount of \$100.00 per day that the final construction completion deadlines of November 1, 2007 for completion of the lagoon rehabilitation and August 31, 2009 for completion of a fourth lagoon cell found in sections V.1.A.(4) and V.1.B.(6) above are not met by the City. Payment is due within sixty days of the particular deadline that is not met.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with stipulated penalties for violation of the compliance schedule in this order. The penalties stipulated by the parties in this order are for future violations, if they occur. The stipulated penalties are designed to reflect the potential economic benefit to the City for failure to make the expenditures needed to stay on schedule. Such penalties are related to the probable severity of the violations in that not meeting the compliance schedule in this order is a fairly serious matter. The penalties would also be related to future culpability in that the

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City has been put on notice by this order that stipulated penalties will result if the compliance schedule is not met.

**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This order is entered into knowingly by and with the consent of the City. By signature to this order, all rights to appeal this order are waived.

**VIII. NONCOMPLIANCE**

Failure to comply with this order may result in the imposition of administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with paragraphs V.1 and V.2 of Section "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this order. The Department reserves the right to issue a new administrative order with an administrative penalty or to seek referral to the Attorney General in lieu of collecting the agreed upon stipulated penalties established by this order.

  
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TERRY HOLLIMAN, MAYOR  
CITY OF HAMBURG

Dated this 15<sup>th</sup> day of  
January, 2007.

  
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DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 31 day of  
January, 2007

City of Hamburg- Wastewater Facility No. 06-36-21-0-01, Kirk Mathis- Field Office No. 4, Larry Bryant- Wastewater Construction Permits, Diana Hansen- Legal Services, U.S. EPA- Region 7, I.B.2.b. & I.B.2.d.